

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES AMERICA	)	
Complainant,	)	
	)	8 U.S.C. 1324A Proceeding
vs.	)	OCAHO Case No: 93A00128
	)	
CAVOTE TIRES, INC., DBA	)	
BIG "O" TIRES	)	
	)	
Respondent.	)	
_____	)	

DECISION AND ORDER  
APPROVING SETTLEMENT AGREEMENT  
CONTAINING CONSENT FINDINGS

E. Milton Frosburg, Administrative Law Judge

Appearances: Alan S. Rabinowitz, Esquire  
for the Immigration and  
Naturalization Service.

James J. Mazzeo, Esquire  
for Respondent.

Procedural History

This proceeding was initiated before me when, by Notice of Hearing on Complaint Regarding Unlawful Employment dated June 21, 1993, Respondent was advised of the filing by the Immigration and Naturalization Service (INS) of a Complaint alleging violations of the employment verification requirements of Section 101 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. Section 1324a.

The Complaint, incorporating the Notice of Intent to Fine (NIF) which was served on Respondent on March 11, 1993, contained six counts alleging violations of Sections 274A(a)(1)(B) and 274A(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. Sections 1324a(a)(1)(B) and 1324(a)(b)(3).

The parties have reached a settlement in the instant case. In support of their settlement, they have submitted the following documents which form the basis of this Decision and Order:

1. A Stipulated Motion to Approve Consent Findings, executed by Alan S. Rabinowitz, Attorney for Complainant on August 26, 1993, and by James J. Mazzeo, attorney for Respondent on September 1, 1993.

2. A document entitled Settlement Agreement Containing Consent Findings executed by Alan S. Rabinowitz, Attorney for Complainant on August 20, 1993, by Frank Shumate for Gustavo De La Vina, Chief Patrol Agent for Complainant on August 23, 1992, by James J. Mazzeo, attorney for Respondent on September 1, 1993, and by Pat Cavote for Respondent.

The agreement of the parties satisfies the controlling regulation for disposition by the Administrative Law Judge of "a[a]ny agreement containing consent findings..." at 28 C.F.R. Part 68.14.

#### Findings of Fact and Conclusions of Law

I conclude that the document entitled Settlement Agreement Containing Consent Findings is fair and satisfactory, and there is no reason not to accept it within the contemplation of 28 C.F.R. Part 68.14.

Respondent admits the allegations set forth in Counts I-VI of the Complaint, thereby conceding violations of Sections 274A(a)(1)(B) and 274A(b)(3) of the Act.

On the basis of the Settlement Agreement Containing Consent Findings, I find and conclude that Respondent has violated Sections 274A(a)(1)(B) and 274A(b)(3) of the Act, & U.S.C. Sections 1324a(a)(1)(B) and 1324a(b)(3) with regard to the employment of the individuals identified in Counts I-VI of the Complaint.

Accordingly,

1. The Stipulated Motion to Approve Consent Findings is granted, omitting and excepting paragraph 11.

2. The Settlement Agreement Containing Consent Findings referred to above, including the recitation of facts contained therein, is adopted and made a part of this Decision and Order according to its terms as if fully set forth herein, omitting and excepting paragraph 11.

3. Respondent shall pay a civil money penalty in the

amount of \$10,000.00 (Ten Thousand Dollars), payment to be made in the manner specified in the Settlement Agreement.

4. Each party shall bear its own attorney fees, other expenses, and costs incurred in this proceeding.

5. This Decision and Order has the same force and effect as Decision and Order made after a full administrative hearing.

6. The entire record on which this order is based consists solely of the Complaint, the Answer, the Notice of Hearing, the Motion to Approve Consent Findings, the Consent Findings, and this Order.


7. The Parties waive any further procedural steps before the Administrative Law Judge.

8. The Parties waive any right to challenge or contest the validity of this Decision and Order.

9. As provided in 28 C.F.R. Part 68.53, this Decision and Order shall become the Final Order of the Attorney General unless, within thirty (30) days from this date, the Office of the Chief Administrative Hearing Officer shall have vacated or modified it.

10. The hearing to be scheduled in or around San Diego, California is cancelled.

IT IS SO ORDERED this 10<sup>th</sup> day of September, 1993, at San Diego, California.

  
E. Milton Frosburg  
Administrative Law Judge

Executive Office for Immigration Review  
Office of the Administrative Law Judge  
950 Sixth Avenue, Suite 401  
San Diego, California 92101  
(619) 557-6179

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 1993, I have served copies of the foregoing DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT CONTAINING CONSENT FINDINGS to the following in the manner indicated:

Office of Chief Administrative  
Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041  
(original via regular mail)

Michael C. McGoings, Esquire  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 7048  
Washington, D.C. 20536  
(copy via regular mail)

Alan S. Rabinowitz, Esquire  
Immigration & Naturalization Service  
880 Front Street, Suite 1234  
San Diego, CA 92101-8834  
(copy via regular mail)

John S. Partin, Esquire  
Hendrizz and Aller  
3737 Camino del Rio South, Suite 400  
San Diego, Ca 92108-4010  
(copy via regular mail)

  
\_\_\_\_\_  
M. CLARKE  
Legal Technician

Executive Office for Immigration Review  
Office of the Administrative Law Judge  
950 Sixth Avenue, Suite 401  
San Diego, California 92101  
(619) 557-6179

RECEIVED  
SEP - 2 PM 2:06  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER  
IMMIGRATION REVIEW  
OCAHO - ALJ  
SAN DIEGO, CALIFORNIA

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	8 U.S.C. 1324a Proceeding
	)	
vs.	)	OCAHO Case No: 93A00128
	)	
CAVOTE TIRES, INC., DBA	)	
BIG "O" TIRES	)	
Respondent.	)	
	)	

SETTLEMENT AGREEMENT CONTAINING CONSENT FINDINGS

This Settlement Agreement (hereinafter "Agreement") is made and entered into by and between the United States Department of Justice, Immigration and Naturalization Service (hereinafter "Service"/ "INS") and Cavote Tires, Inc., dba Big "O" Tires (hereinafter "Respondent"). INS AND RESPONDENT SHALL BE COLLECTIVELY REFERRED TO HEREIN AS "THE PARTIES."

WITNESSETH

WHEREAS, the INS issued a Notice of Intent to Fine (Form I-763) served on March 11, 1993, (hereinafter "the Notice") against Respondent under Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (hereinafter "the Act") in a case denominated as In the Matter of Cavote Tires, Inc., dba Big "O" Tires, SDC 274a-1003 (hereinafter "the Action"). On June 18, 1993 a formal Complaint was filed by the Service, and the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, scheduled the case for hearing, at San Diego, California, pursuant to further order of the Administrative Law Judge or that office.

WHEREAS, INS has stated in the Complaint, that it intends that the Respondent pay (a) fine (s) in the amount of Twenty-Seven Thousand, Six Hundred and Fifty Dollars (\$27,650.00) for violation(s) of Section(s) 274A(a)(1)(B) and 274A(b)(3) of the Act, and

WHEREAS, the Parties to this Agreement desire to settle fully and finally the Action,

NOW THEREFORE in consideration of the mutual promises and undertakings and covenants contained herein and intending to be bound by this Agreement, THE PARTIES AGREE AS FOLLOWS:

1. That the Complaint and the allegations contained therein are incorporated herein as though fully set forth and that Respondent will pay a total civil money penalty of Ten Thousand Dollars (\$10,000.00);
2. That the Respondent admits liability to Count I of the Complaint, that the Employment Eligibility Form (Form I-9) was not prepared nor presented at a scheduled Form I-9 inspection on January 15, 1993, in violation of Sections 274A(a)(1)(B) and 274A(b)(3) of the Act;
3. That the Respondent admits liability to Count II and IV of the Complaint, that the Employment Eligibility Form (Form I-9) was not presented at a scheduled inspection on January 15, 1993, in violation of Section 274A(b)(3) of the Act;
4. That the Respondent admits liability to Counts III, IV, V, and VI of the Complaint, that the Employment Eligibility Forms (Form I-9) were not properly completed at the Form I-9 inspection on January 15, 1993, in violation of Section 274A(a)(1)(B) of the Act;
5. That in Settlement of Count I, Respondent agrees to pay Three Hundred Dollars (\$300.00); that in settlement of Count II, Respondent agrees to pay One Hundred Dollars (\$100.00); that in Settlement of Count III, Respondent agrees to pay One Hundred Dollars (\$100.00) for each violation, a total of Two Hundred Dollars (\$200.00), that in settlement of Count IV, Respondent agrees to pay One Hundred and Fifty Dollars (\$150.00) for each violation, a total of Six Thousand, Four Hundred and Fifty Dollars (\$6,450.00); that in settlement of Count V, Respondent agrees to pay One Hundred and Fifty Dollars (\$150.00) for each violation, except Count V, A-8, where Respondent agrees to pay Two Hundred Dollars (\$200.00), a total of One Thousand, Two Hundred and Fifty Dollars (\$1,250.00); that in settlement of Count VI, Respondent agrees to pay One Hundred Dollars (\$100.00), a total of One Thousand and Seven Hundred Dollars (\$1,700.00),

6. That Respondent agrees to pay One Thousand Dollars (\$1,000.00) at approval of the Settlement Agreement by the Administrative Law Judge and Three Hundred Dollars (\$300.00) in thirty day increments from approval by the Administrative Law Judge, until the fine is paid; payment, if possible will be by cashier's check or money order;
7. If default is made in the payment of any amount due pursuant to the Installment Agreement Schedule for a period of more than ten days the Government, at any time thereafter, may declare the entire balance of the original fine, as set forth in the Complaint, to be immediately due and payable. Failure to accelerate the amount due under this agreement shall not constitute a waiver of the Government's right to accelerate the amount due as a result of this default or any subsequent default, unless the failure to make payment, including all accrued interest, administrative charges and penalties, shall have been cured before notice of an acceleration has been given;
8. If the payment of any amount due pursuant to the Installment Agreement Schedule shall not be paid in accordance with said Schedule, Ten Dollars (\$10.00) per month shall be assessed as a reasonable administrative handling charge for each payment default. In addition, for any non-payment which continues for more than 90 days, a penalty charge of 6% per annum shall be assessed on the unpaid balance of the original fine amount;
9. In the event of any action to enforce any of the terms or conditions of the Installment Agreement Schedule, the Government shall be entitled to recover the reasonable attorney's fees incurred;
10. That nothing in this Agreement shall be construed as relieving the Respondent of liability for future violations of Section 274A of the Act nor shielding it from subsequent applicable penalties;
11. That the Respondent will cease and desist from any future violations of Section 274A of the Act;
12. That the entire record on which any order may be based shall consist solely of the Complaint, Answer, and the Agreement;

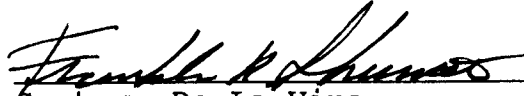
13. That the parties agree that the Settlement Agreement shall constitute a waiver of any further procedural steps before the Administrative Law Judge;
14. That the parties agree that the Settlement Agreement shall constitute a waiver of any right to challenge or contest the validity of the Order entered into in accordance with the Agreement;
15. That the Order issued in this case by the Administrative Law Judge shall have the same force and effect as an Order made after full hearing;
16. That INS releases (an) discharges the Respondent, parent corporations, subsidiaries, associated and affiliated entities, their officers, directors, representatives, employees, agents, successors, and assigns (hereinafter the "companies" and "person") from any further penalties under Section 274A of the Act for the violations as set forth in the Complaint, except for those penalties listed herein, and this Agreement shall constitute a complete release from and bar to any and all causes of action, claims, rights, liens of subrogated interests, by reason of or arising from the violations as set forth in the Complaint, except for those penalties listed herein;
17. That each Party shall bear its own costs, attorneys fees and any other expenses incurred by such party in this Action;
18. That this Agreement contains the entire understanding of the Parties and fully supercedes any and all prior agreements and understandings with respect to the subject matter hereof. There have been no representations, express or implied, as to the subject matter hereof, except as contained herein. This Agreement may be amended or modified only by a written instrument duly executed by each of the parties prior to the effective date of any such amendment or modification.
19. That this Agreement is effective on the date this Agreement is executed by the Parties and approved by the Administrative Law Judge;
20. Each party represents and warrants that this Settlement Agreement has been duly approved and authorized by such Party and constitutes a binding obligation of such



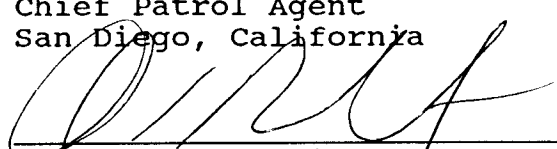
Party, and that the officer of official signing this Agreement is authorized by the Party to sign on its behalf.

IMMIGRATION AND NATURALIZATION SERVICE

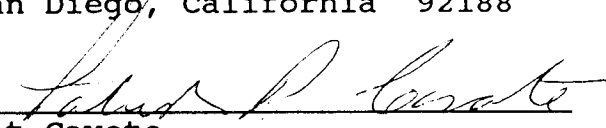
8/23/93  
Date

  
for Gustavo De La Vina  
Chief Patrol Agent  
San Diego, California

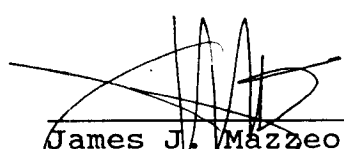
8/20/93  
Date

  
Alan S. Rabinowitz  
Assistant District Counsel, INS  
880 Front Street  
San Diego, California 92188

                      
Date

  
Pat Cavote  
President  
Cavote Tires, Inc.  
6690 Miramar Rd., #A  
San Diego, CA 92121

9-1-93  
Date

  
James J. Mazzeo  
Attorney for Respondent  
Hendrix & Aller  
3737 Camino Del Rio South, #400  
San Diego, California 92108-4010

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

RECEIVED

SEP-9 PM 2:07  
EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
OCAHO-AIJ  
SAN DIEGO, CALIFORNIA

UNITED STATES OF AMERICA,  
Complainant,  
  
vs.  
  
CAVOTE TIRES, INC., DBA  
BIG "O" TIRES  
Respondent.

8 U.S.C. 1324a Proceeding  
OCAHO Case No: 92A00128

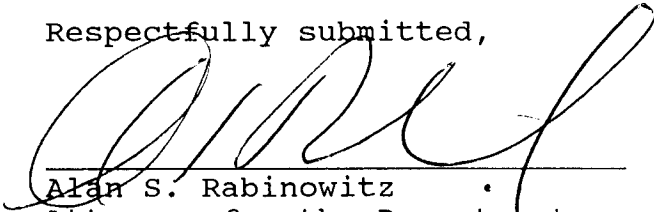
STIPULATED MOTION TO APPROVE CONSENT FINDINGS

Complainant, by and through the Immigration and Naturalization Service, by its attorney, Alan S. Rabinowitz, Assistant District Counsel, and Respondent, by its attorney of record, James J. Mazzeo, respectfully requests that this Honorable Court order the approval of the attached Settlement Agreement Containing Consent Findings.

Respectfully submitted,

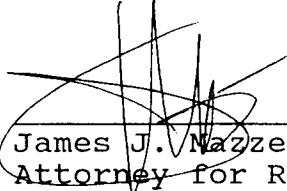
8/26/93

Date

  
Alan S. Rabinowitz  
Attorney for the Department  
of Justice, Immigration and  
Naturalization Service

9-1-93

Date

  
James J. Mazzeo  
Attorney for Respondent  
Hendrix & Aller  
3737 Camino Del Rio South, #400  
San Diego, CA 92108-4010